

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

NOE MARTINEZ TREVINO
Plaintiff,

V.

**FAYZULLO NABIEV, ABDUNABI
EXPRESS, INC., AND AMAZON
LOGISTICS, INC.**

CIVIL ACTION NO. 6:24-CV-205

**DEFENDANT AMAZON LOGISTICS, INC.'S MOTION TO DISMISS UNDER FED.
R. CIV. P. 41**

TO THE HONORABLE COURT:

COMES NOW, Defendant Amazon Logistics, Inc., who respectfully moves this Court to dismiss Plaintiff's claims pursuant to Rule 41 of the Federal Rules of Civil Procedure.

I. Introduction

Plaintiff Noe Martinez Trevino, filed his Original Petition on March 21, 2024 in Cause No. 24DCV344767, in 169th District Court of Bell County, Texas. Amazon was served, appeared in the action and timely removed the case to this Court on April 22, 2024 (doc. 1). Since the removal of the case, Plaintiff has completely failed to prosecute the action and has additionally shown lack of intent to prosecute this matter in filing a Notice of Non-suit with the incorrect court.

II.
Argument and Authorities

Rule 41 “[a]llows a defendant to seek the dismissal of an action for lack of prosecution by the plaintiff or for his failure to comply with an order of the court or the Federal Rules of Civil Procedure.” *Gonzalez v. Firestone Tire & Rubber Co.*, 610 F.2d 241, 247 (5th Cir. 1980). “If the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it.” FED. R. CIV. P. 41(b). Aside from the authority granted by Rule 41, this Court “possesses the inherent authority to dismiss an action for want of prosecution, which it may exercise on its own motion when necessary to maintain the orderly administration of justice.” *Gonzalez*, 610 F.2d at 247 (citations omitted).

On September 27, 2024, Plaintiff filed a Notice of Non-suit against Defendants with the state court. Exhibit A. The matter was dismissed with prejudice in state court on October 4, 2024. Exhibit B. Upon inquiring about the dismissal of the matter in state court, Defendant’s counsel was notified that the matter had settled. Defendant’s counsel informed Plaintiff’s counsel that the dismissal had been filed in the wrong court, however, Plaintiff’s counsel stopped communicating with Defendant’s counsel and would not respond to any attempts after November 15, 2024. It has now been 8 months and Plaintiff has not filed a dismissal with this court or taken any other positive steps to prosecute the case. Plaintiff’s lack of cooperation has prevented the final dissolution of this matter and keeping this lawsuit on the docket will waste the Court’s valuable resources. Therefore, Defendant requests the Court to dismiss this case with prejudice pursuant to Rule 41.

Prayer

For the reasons stated, Defendant Amazon Logistics, Inc., requests the Court to dismiss all of Plaintiff’s claims with prejudice. Defendant also requests any other relief to which it is entitled at law or in equity.

Respectfully submitted,

**WILSON ELSER MOSKOWITZ
EDELMAN & DICKER LLP**

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**ATTORNEYS FOR DEFENDANT
AMAZON LOGISTICS, INC.**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on this 11th day of July, 2025 the foregoing was served upon the following via the U.S. District Court CM/ECF system , to all parties and counsel of record.

:

/s/ Laura S. Favaloro

Laura Favaloro